

REMARKS

Reconsideration and withdrawal of the rejections of the application are respectfully requested in view of the amendments and remarks made herewith, which are believed to place the application into condition for allowance.

Status of the Claims and Formal Matters

Claims 1-13 are pending in this application. This paper currently amends Claims 1, 5, 12, and 13, without prejudice, without admission, without surrender of subject matter, and without any intention of creating any estoppel as to equivalents. No new matter has been added by these amendments. Support for the amended recitations can be found throughout the specification.

The amendments of the claims, as presented herein, are not made for purposes of patentability within the meaning of 35 U.S.C. §§§§101, 102, 103, or 112. Rather, these amendments and additions are made simply for clarification and to round out the scope of protection to which Applicants are entitled.

Rejections under 35 U.S.C. §112, second paragraph

Claims 1-7, 12 and 13 were rejected under 35 U.S.C. §112, second paragraph for allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. This rejection is respectfully traversed in view of the amendments to the claims and remarks made herewith.

The Office Action contends that, in claims 1 and 13, it is not clear what is defined as “a receiving means” and how it is structurally and functionally related to the coupling apparatus. The word “means” was allegedly preceded by the word “receiving” in an attempt to use a “means” clause to recite a claim element as a means for performing a specified function. It is respectfully submitted that the amendment herewith clarifies that the receiving means extends outwardly from the extended second portion of the coupling means, thereby clarifying the structural relationship of the receiving means and the coupling apparatus. Furthermore, it is respectfully submitted that the term “receiving means” is not unclear as one of skill in the art would readily recognize that a “receiving means” is a structure that accepts and holds a separate entity. In the instant case, the receiving means can receive and hold a protective material such as

a shower curtain liner. And, it is further respectfully submitted that the term “receiving means” is not unclear as the claims must be read in light of the specification. It is respectfully submitted that the disclosure found on page 27, lines 7 to 22, when read in conjunction with Figures 33 and 34, provides a sufficiently clear description of the “receiving means” recited in claims 1 and 13 such that the term cannot be considered unclear.

Claim 5 is allegedly unclear for the recitation of “concavely shaped”. Claim 5 has accordingly been amended herein to provide clarity. Claim 6 also refers to “an enlarged second end”, which was deemed to be confusing because a “first” reference was not provided to define a “second”. It is respectfully submitted that the recitation of a “second end” is not unclear because claim 6 is dependent upon claim 1, which includes the recitation of a “receiving means having a first end and a second end.” Accordingly, in reading claim 6, the claim from which it depends, claim 1, must also be considered, and in so doing, the “second end” is sufficiently clear.

Claim 12 is allegedly indefinite for the recitation “such as”, because it is unclear whether the limitations following the phrase are part of the claimed invention. Claim 12 has been amended herein to replace the phrase “such as” with the term “comprising”.

Accordingly, the amendments to the claims made herewith overcome the alleged deficiencies and thereby obviate the rejection. Consequently, reconsideration and withdrawal of the rejections under §112, second paragraph are respectfully requested.

Double Patenting Rejection

Claims 1-13 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-13 of U.S. Patent No. 6,698,061 (“the ‘061 patent) in view of Markward (U.S. Patent No. 2,705,385). This rejection is respectfully traversed.

The ‘061 patent allegedly discloses the invention as claimed, except for the receiving means attached to the coupling means. Markward allegedly teaches a curtain hook having a receiving means for supporting an object (see Figures 4 and 7). The Examiner contends that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the hook of the ‘061 patent with a receiving means formed in the coupling means as taught by Markward to support an object for convenience in use.

Markward relates to a support for a horizontally disposed receptacle, i.e., a soap dish, that is attached at the upper edge of a shower curtain by a horizontal rim or flange (the support; see object 18 of Figure 4 and objects 26-29 of Figure 7 of Markward) and which hangs from the curtain rod via an upper hook member. This receptacle can be integral to the support (as in Figure 4 of Markward), or it can be detachable from the support (as in Figure 7 of Markward). However, in all embodiments, the Markward support is not detachable from the upper hook member. There is no teaching, suggestion, or motivation in Markward for a fastening device that comprises a coupling means that is detachable from an attachment means.

The '061 patent relates to a fastening device comprising a coupling means that is detachable from an attachment means, but lacks the receiving means attached to the coupling means. The '061 patent is silent as to a receiving means.

Based on the lack of motivation in either of the cited references to modify or combine reference teachings, an obviousness rejection cannot stand (MPEP §2143). The fact that references can be combined or modified is not sufficient to establish *prima facie* obviousness, unless the prior art also suggests the desirability of the combination (*In re Mills*, 916 F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990). As no motivation exists to combine the references, it is respectfully submitted that the rejection cannot stand and should be withdrawn.

Accordingly, reconsideration and withdrawal of the double patenting rejection is respectfully requested.

REQUEST FOR INTERVIEW

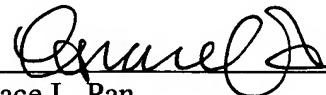
If any issue remains as an impediment to allowance, prior to issuance of any paper other than a Notice of Allowance, an interview with the Examiner is respectfully requested, and the Examiner is respectfully requested to contact the undersigned to arrange a mutually convenient time and manner for such an interview.

CONCLUSION

In view of the foregoing amendments, it is believed that the claims in this application are patentable, and early and favorable consideration thereof is earnestly solicited.

Respectfully submitted,
FROMMER LAWRENCE & HAUG LLP

By:


Grace L. Pan
Reg. No. 39,440
(212) 588-0800